

Members

Sen. Brandt Hershman, Chairperson
Sen. Greg Walker
Sen. Timothy Skinner
Rep. Peggy Welch
Rep. Eric Turner



COMMISSION ON STATE TAX AND FINANCING POLICY

Legislative Services Agency

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MEETING MINUTES¹

Meeting Date: October 5, 2009
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., 431
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Brandt Hershman, Chairperson; Sen. Greg Walker; Sen. Timothy Skinner; Rep. Peggy Welch; Rep. Eric Turner.

Members Absent: None.

Chairperson Sen. Hershman called the meeting to order at 10:00 a.m. Sen. Hershman made introductory remarks regarding the agenda.

(1) Attorney General's Report to Commission on Political Subdivisions' Use of Outside Counsel

Andrew Swain, Attorney General's Office, presented a memorandum to the Commission that addressed the Attorney General's gatekeeper role in litigating property tax cases (Exhibit A). He explained that the Attorney General's Office must determine whether a case addresses a constitutional issue, a statutory interpretation issue, or a valuation issue, and that the Attorney General will represent counties in statutory and constitutional cases. Mr. Swain discussed examples of cases when the Attorney General's Office determined that litigation was a valuation issue, and then contacted the county officials to determine whether they wanted the Attorney General's office to continue to represent them or whether they wished to hire outside counsel. Mr. Swain also explained that even when the Attorney General's Office represents counties in these cases, the office works closely with the county. Regarding the length of time that it takes the Attorney General's Office to make a determination of whether a county may hire outside counsel, Mr. Swain reported that this process is usually completed within a couple

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

of weeks after receiving the petition. He also expressed that there is sufficient clarity in the statute because it gives the Attorney General the opportunity to fulfill the gatekeeper role.

Andrew Berger, Association of Indiana Counties, informed the Commission that he is not aware of any complaints from counties regarding the Attorney General's gatekeeper role in litigating property tax cases.

(2) Local Option Income Tax (LOIT) Issues

James Landers, senior fiscal analyst, Legislative Services Agency, presented a handout that provided information on LOIT adoption by the counties and their respective rates and certified distributions (Exhibit B). He also indicated that because adoption of LOIT and rates continue to change, this information will be updated. Mr. Landers explained that certified distributions have declined compared to previous years because they are based on prior economic performance, and that there is about a year to a year-and-a-half lag for certified distributions. He stated that reconciliation occurs in January every year.

Bob Sigalow, senior fiscal analyst, Legislative Services Agency, presented a memorandum on LOIT through 2009 (Exhibit C). Mr. Sigalow informed the Commission that 91 counties have adopted some form of LOIT: 56 have adopted CAGIT, 28 have adopted COIT, 75 have adopted CEDIT, and 22 counties have adopted at least one of LOIT 1, 2, and 3. Mr. Sigalow will provide further information to the Commission on CAGIT or COIT certified shares percentage of total shares by taxing unit type, excluding Marion County.

Andrew Berger, Association of Indiana Counties, presented a handout regarding 2009 County LOIT adoptions (Exhibit D). He explained that some counties may be hesitant to adopt LOIT because they do not wish to increase income taxes during difficult economic times. Also, he stated that homeowners are already experiencing substantial property tax relief, and this could be a reason for counties to not consider adoption of LOIT. Mr. Berger remarked that counties must determine whether the need to decrease the circuit breaker loss is reason enough to raise income taxes through LOIT adoption, and that it is expensive for counties to determine the best way to reduce circuit breaker loss. He also explained that in those COIT counties where the county income tax council is controlled by cities, the elected representatives of residents outside of the cities and towns will not have a final say on the adoption of LOIT. He assured the Commission that the Association of Indiana Counties is warning the counties about declining local income tax revenue that will lead to a decline in certified distributions. Mr. Berger recommended that LOIT adoption periods coincide with budget deadlines. He also reported that Wabash County's LOIT adoptions and other credits eliminated property taxes for some residents.

Ed Gohmann, staff attorney, Legislative Services Agency, presented a memorandum on the adoption deadlines for LOITs (Exhibit E). The memo provided information on the adoption periods for each type of LOIT and the dates that the adopted LOIT would take effect.

Mark Scherer, representing the Indiana Fire Chief's Association, explained how fire territories are formed, and that they are not a separate taxing unit. He testified that the distribution of public safety LOIT is paid to counties and municipalities, but not to townships. Mr. Scherer further explained that there may be a negative impact from a provision in HB 1001-2009(ss) regarding the distribution of taxes that looks at property taxes before the territory was formed. This information could be out of date and/or not account for population growth. Another issue raised was that the statute provides that fire protection territories may not carry an operating balance of more than 20% the territory's annual budget, which often requires the issuance of tax anticipation warrants.

Chief Jeff Fox, Riley Fire Department, explained how fire protection districts are formed, and that they are separate political subdivisions. He noted that fire protection districts are not included in the distribution of public safety LOIT funds, and that taxpayers who decide to adopt a public safety LOIT may believe that they are included, which could influence their decision. Chief Fox informed the Commission that a fire protection district's initial budget is taken to the Department of Local Government Finance (DLGF) for the establishment of a levy, and that the budget is submitted to the county council for review. He commented that there are about 40 to 50 fire protection districts in existence, and that the lack of revenue in a town or township may be a reason for the forming of a fire protection district. Chief Fox also remarked that, theoretically, any geographical area could create a fire protection district. For example, Fayette Township in Vigo County created a fire protection district within only part of the township.

Richard Thompson, Hendricks County Council, testified that Hendricks County has considered adoption of a LOIT, but there are concerns about the fairness in distribution of income taxes and the shift of the tax burden. He suggested that counties be allowed to raise income tax for county services only. Mr. Thompson remarked that annexation causes increases in the cost of municipal government. He also noted that more municipalities are using paid fire departments instead of volunteer fire departments.

(3) Update on 2009 Property Taxes and Circuit Breakers

Dr. Larry DeBoer, Purdue University, presented a statewide property tax report for 68 counties that included information regarding homestead tax bill changes, nonhomestead property, effects of the 2008 property tax reform, and circuit breaker tax caps (Exhibit F). He reported that the average change for the 68 reporting counties was about 3% more property tax relief in 2009 compared to 2008. Dr. DeBoer stated that, now, only 29% of property taxes are paid by homesteads. The major beneficiaries of circuit breaker credits were rental housing owners. He does not expect agricultural property to receive much property tax relief from the circuit breakers because of the increase in the assessed value of farmland. In conclusion, Dr. DeBoer reported that the effects of the legislation are generally what was expected.

Bob Sigalaw, senior fiscal analyst, Legislative Services Agency, provided updates on estimated circuit breaker credits by county and taxing unit (Exhibit G). He explained that there are assumptions of the future growth of levies in the estimates, and that actual losses in CY 2009 were included if they were available. He estimated \$178 M in circuit breaker loss for 2009, \$441 M for 2010, and \$470 M for 2011. Mr. Sigalaw will be available to discuss this report at the next meeting.

Sen. Hershman announced that the next meeting would be held on October 13, 2009, and that there will be additional testimony on LOIT and circuit breakers at this meeting. Sen. Hershman adjourned the meeting at approximately 12:30 p.m.